

NINETY-SIXTH LEGISLATURE

FIRST SESSION

LEGISLATIVE RESOLUTION 7CA

PROPOSED CONSTITUTIONAL AMENDMENT

Introduced by Schmitt, 41

Read first time January 11, 1999

Committee: Judiciary

1 THE MEMBERS OF THE NINETY-SIXTH LEGISLATURE OF NEBRASKA,
2 FIRST SESSION, RESOLVE THAT:

3 Section 1. At the general election in November 2000 the
4 following proposed amendment to the Constitution of Nebraska shall
5 be submitted to the electors of the State of Nebraska for approval
6 or rejection:

7 To amend Article V, sections 10, 11, 20, 21, and 30, and
8 add new sections 15 to 17 to Article V:

9 V-10 "The state shall be divided into district court
10 judicial districts. Until otherwise provided by law, the
11 boundaries of the judicial districts and the number of judges of
12 the district courts shall remain as now fixed. The judges of the
13 district courts shall be ~~selected~~ elected by the registered voters
14 from the respective districts. ~~as provided in this Article V.~~"

15 V-11 "The Legislature may change the number of judges of
16 the district courts and shall alter the boundaries of judicial
17 districts after each federal decennial census. Such change in

1 number or alterations in boundaries shall not vacate the office of
2 any judge. Such districts shall be formed of compact territory
3 bounded by county lines."

4 V-15 "Beginning in 2002, the district court judges shall
5 be elected at the statewide general election on a nonpartisan
6 basis. The judges from odd-numbered districts shall be elected in
7 November 2002 and every six years thereafter, and the judges from
8 even-numbered districts shall be elected in November 2002 and
9 November 2004 and every six years thereafter."

10 V-16 "Beginning in 2002 and every six years thereafter,
11 the county court judges shall be elected at the statewide general
12 election on a nonpartisan basis."

13 V-17 "If a vacancy occurs in the office of district or
14 county judge before the expiration of the regular term of office,
15 the Governor shall fill the vacancy for the unexpired term."

16 V-20 "All officers provided for in this Article shall
17 hold their offices until their successors ~~shall be~~ are qualified,
18 and they shall respectively reside in the district or county from
19 which they ~~shall be selected~~ are elected or appointed. All
20 officers, when not otherwise provided for in this Article, shall
21 perform such duties and receive such compensation as may be
22 prescribed by law."

23 V-21 "(1) In the case of any vacancy in the Supreme Court
24 ~~or in any district court~~ or in such other court or courts made
25 subject to this provision by law other than the district and county
26 courts, such vacancy shall be filled by the Governor from a list of
27 at least two nominees presented to him or her by the appropriate
28 judicial nominating commission. If the Governor ~~shall fail~~ fails

1 to make an appointment from the list within sixty days from the
2 date it is presented, ~~to him~~, the appointment shall be made by the
3 Chief Justice or the acting Chief Justice of the Supreme Court from
4 the same list.

5 (2) In all other cases not provided for in this article,
6 any vacancy shall be filled as provided by law.

7 (3) At the next general election following the expiration
8 of three years from the date of appointment of any judge under the
9 provisions of subsection (1) of this section and every six years
10 thereafter as long as such judge retains office, each Justice or
11 Judge of the Supreme Court ~~or district court~~ or such other court or
12 courts as provided by the Legislature ~~shall provide~~ shall have his
13 or her right to remain in office subject to approval or rejection
14 by the electorate in such manner as provided by the Legislature.
15 ~~shall provide, PROVIDED, that every judge holding or elected to an~~
16 ~~office described in subsection (1) of this section on the effective~~
17 ~~date of this amendment whether by election or appointment, upon~~
18 ~~qualification shall be deemed to have been selected and to have~~
19 ~~once received the approval of the electorate as herein provided,~~
20 ~~and shall be required to submit his right to continue in office to~~
21 ~~the approval or rejection of the electorate at the general election~~
22 ~~next preceding the expiration of the term of office for which such~~
23 ~~judge was elected or appointed, and every six years thereafter. In~~
24 the case of the Chief Justice of the Supreme Court, the electorate
25 of the entire state shall vote on the question of approval or
26 rejection. In the case of any Judge of the Supreme Court, other
27 than the Chief Justice, and any judge of ~~the district court or~~ any
28 other court made subject to subsection (1) of this section, the

1 electorate of the district from which such judge was selected shall
2 vote on the question of such approval or rejection.

3 (4) There shall be a judicial nominating commission for
4 the Chief Justice of the Supreme Court and one for each judicial
5 district of the Supreme Court ~~and of the district court~~ and one for
6 each area or district served by any other court made subject to
7 subsection (1) of this section by law. Each judicial nominating
8 commission shall consist of nine members, one of whom shall be a
9 Judge of the Supreme Court who shall be designated by the Governor
10 and shall act as ~~chairman~~, the chairperson but shall not be
11 entitled to vote. The members of the bar of the state residing in
12 the area from which the nominees are to be selected shall designate
13 four of their number to serve as members of ~~said~~ the commission,
14 and the Governor shall appoint four citizens, not admitted to
15 practice law before the courts of the state, from among the
16 residents of the same geographical area to serve as members of ~~said~~
17 the commission. Not more than four of such voting members shall be
18 of the same political party. The terms of office for members of
19 each judicial nominating commission shall be staggered and shall be
20 fixed by the Legislature. The nominees of any such commission
21 cannot include a member of such commission or any person who has
22 served as a member of such commission within a period of two years
23 immediately preceding his or her nomination or for such additional
24 period as provided by the Legislature. ~~shall provide.~~ The names
25 of candidates shall be released to the public prior to a public
26 hearing.

27 (5) Members of the nominating commission shall vote for
28 the nominee of their choice by roll call. Each candidate must

1 receive a majority of the voting members of the nominating
2 commission to have his or her name submitted to the Governor."

3 V-30 "(1) A Justice or Judge of the Supreme Court or
4 judge of any court of this state, including judges elected or
5 appointed to the district or county courts, may be reprimanded,
6 disciplined, censured, suspended without pay for a definite period
7 of time, not to exceed six months, or removed from office for (a)
8 willful misconduct in office, (b) willful disregard of or failure
9 to perform his or her duties, (c) habitual intemperance, (d)
10 conviction of a crime involving moral turpitude, (e) disbarment as
11 a member of the legal profession licensed to practice law in the
12 State of Nebraska, or (f) conduct prejudicial to the administration
13 of justice that brings the judicial office into disrepute, or he or
14 she may be retired for physical or mental disability seriously
15 interfering with the performance of his or her duties if such
16 disability is determined to be permanent or reasonably likely to
17 become permanent. Any citizen of the State of Nebraska may request
18 the Commission on Judicial Qualifications to consider the
19 qualifications of any Justice or Judge of the Supreme Court or
20 other judge, and in such event the commission shall make such
21 investigation as the commission deems necessary and shall, upon a
22 finding of probable cause, reprimand such Justice or Judge of the
23 Supreme Court or other judge or order a formal open hearing to be
24 held before it concerning the reprimand, discipline, censure,
25 suspension, removal, or retirement of such Justice or Judge of the
26 Supreme Court or other judge. In the alternative or in addition,
27 the commission may request the Supreme Court to appoint one or more
28 special masters who shall be judges of courts of record to hold a

1 formal open hearing to take evidence in any such matter, and to
2 report to the commission. If, after formal open hearing, or after
3 considering the record and report of the masters, the commission
4 finds that the charges are established by clear and convincing
5 evidence, it shall recommend to the Supreme Court that the Justice
6 or Judge of the Supreme Court or other judge involved shall be
7 reprimanded, disciplined, censured, suspended without pay for a
8 definite period of time not to exceed six months, removed, or
9 retired as the case may be.

10 (2) The Supreme Court shall review the record of the
11 proceedings and in its discretion may permit the introduction of
12 additional evidence. The Supreme Court shall make such
13 determination as it finds just and proper, and may order the
14 reprimand, discipline, censure, suspension, removal, or retirement
15 of such Justice or Judge of the Supreme Court or other judge, or
16 may wholly reject the recommendation. Upon an order for
17 retirement, the Justice or Judge of the Supreme Court or other
18 judge shall thereby be retired with the same rights and privileges
19 as if he or she had retired pursuant to statute. Upon an order for
20 removal, the Justice or Judge of the Supreme Court or other judge
21 shall be removed from office, his or her salary shall cease from
22 the date of such order, and he or she shall be ineligible for
23 judicial office. Upon an order for suspension, the Justice or
24 Judge of the Supreme Court or other judge shall draw no salary and
25 shall perform no judicial functions during the period of
26 suspension. Suspension shall not create a vacancy in the office of
27 Justice or Judge of the Supreme Court or other judge.

28 (3) Upon order of the Supreme Court, a Justice or Judge

1 of the Supreme Court or other judge shall be disqualified from
2 acting as a Justice or Judge of the Supreme Court or other judge,
3 without loss of salary, while there is pending (a) an indictment or
4 information charging him or her in the United States with a crime
5 punishable as a felony under Nebraska or federal law or (b) a
6 recommendation to the Supreme Court by the Commission on Judicial
7 Qualifications for his or her removal or retirement.

8 (4) In addition to the procedure set forth in subsections
9 (1) and (2) of this section, on recommendation of the Commission on
10 Judicial Qualifications or on its own motion, the Supreme Court (a)
11 shall remove a Justice or Judge of the Supreme Court or other
12 judge, including a judge of the district or county court, from
13 office when in any court in the United States such justice or judge
14 pleads guilty or no contest to a crime punishable as a felony under
15 Nebraska or federal law, and (b) may suspend a Justice or Judge of
16 the Supreme Court or other judge, including a judge of the district
17 or county court, from office without salary when in any court in
18 the United States such justice or judge is found guilty of a crime
19 punishable as a felony under Nebraska or federal law or of any
20 other crime that involves moral turpitude. If his or her
21 conviction is reversed, suspension shall terminate and he or she
22 shall be paid his or her salary for the period of suspension. If
23 he or she is suspended and his or her conviction becomes final the
24 Supreme Court shall remove him or her from office.

25 (5) All papers filed with and proceedings before the
26 commission or masters appointed by the Supreme Court pursuant to
27 this section prior to a reprimand or formal open hearing shall be
28 confidential. The filing of papers with and the testimony given

1 before the commission or masters or the Supreme Court shall be
2 deemed a privileged communication.

3 When the Commission on Judicial Qualifications determines
4 that disciplinary action is warranted, whether it be a reprimand or
5 otherwise, the Commission on Judicial Qualifications shall issue
6 one or more short announcements confirming that a complaint has
7 been filed; stating the subject and nature of the complaint, the
8 disciplinary action recommended or reprimand issued, or the date of
9 the hearing; clarifying the procedural aspects; and reciting the
10 right of a judge to a fair hearing.

11 When the Commission on Judicial Qualifications determines
12 that disciplinary action is not warranted, and the existence of any
13 investigation or complaint has become publicly known, the judge
14 against whom a complaint has been filed or investigation commenced
15 may waive the confidentiality of papers and proceedings under this
16 subsection.

17 The Supreme Court shall by rule provide for procedure
18 under this section before the commission, the masters, and the
19 Supreme Court.

20 (6) No Justice or Judge of the Supreme Court or other
21 judge shall participate, as a member of the commission, or as a
22 master, or as a member of the Supreme Court, in any proceedings
23 involving his or her own reprimand, discipline, censure,
24 suspension, removal, or retirement."

25 Sec. 2. The proposed amendment shall be submitted to the
26 electors in the manner prescribed by the Constitution of Nebraska,
27 Article XVI, section 1, with the following ballot language:

28 "A constitutional amendment to provide for the election

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1 of judges of the county and district courts.
2 For
3 Against".